No. 44282-5

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:

STEVEN CRAIG CEARLEY,

Petitioner

STATE'S RESPONSE BRIEF

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STATE'S RESPONSE TO STATUS OF PETITIONER

The State does not contest the status of Petitioner as described by Mr. Steven Cearley. Personal Restraint Petition at 1.

B.

STATEMENT OF THE CASE

With one caveat, the State accepts the factual assertions that are contained in the unpublished opinion by the Court of Appeals (No. 39823-I-II) dated November 1, 2011. *See* Appendix A. The Court of Appeals opinion does not make clear that Mr. Cearley was sentenced under RCW 9.94A.507, which mandates a minimum and a maximum term for each conviction. For each of the five counts of Rape of a Child in the First Degree, Mr. Cearley received a sentence of 800 months to life. [The 800 month minimum term was an exceptional sentence.] For the one count of Child Molestation in the First Degree, Mr. Cearley received a sentence of 198 months to life. All of these sentences were ordered to run concurrently. *See* Appendix B. As appropriate, the State will contest specific facts raised by Mr. Cearley in each section of his Personal Restraint Petition.

C.

ARGUMENT

Standard of Review

The Petitioner, in filing a Personal Restraint Petition, has the burden of proving by a preponderance of the evidence the existence of (1) a constitutional error that results in actual and substantial prejudice or (2) a non-constitutional error that results in a complete miscarriage of justice. *In re Pers. Restraint of Lord*, 152 Wash.2d 182, 188, 94 P.3d 952 (2004). In demonstrating this burden of proof, the Petitioner must delineate the facts upon which the claim of unlawful restraint is based and articulate the evidence available to support the factual allegations. *In re Pers. Restraint of Monschke,* 160 Wash.App. 479, 488, 251 P.3d 884 (2010); RAP 16.7(a)(2).

Issue No. 1

Mr. Cearley's right to a fair trial was not violated due to alleged "coaching" of the victim by a victim advocate.

Mr. Cearley claims that a victim advocate coached the victim in court by smiling/giving a nod or by looking away. Personal Restraint Petition at 8; Appendix C of Personal Restraint Petition, paragraph no. 11. The Petitioner also asserts that it was improper for the victim to have a "squeezy toy" and to be surrounded by victim advocates outside the

courtroom. Personal Restraint Petition at 8; Appendix C of Personal Restraint Petition, paragraph no. 12. In short, Mr. Cearley believes that the victim advocates were too "chummy" with the victim and that this special relationship caused the jury to be biased against the Petitioner.

At the outset, the State needs to emphasize that the Petitioner fails to mention several key facts. First, victim advocates play a special role in Washington. Under RCW 7.69.030(10), victims of violent and sex crimes have a right to have a crime victim advocate present "at any judicial proceedings related to criminal acts committed against the victim." Further, RCW 7.69A.030(8) allows "an advocate to be present in court while the child testifies in order to provide emotional support to the child." In this case, the crime victim advocates were carrying out their statutory responsibilities. Secondly, the Petitioner erroneously asserts that the crime victim advocate sitting in the first row of the gallery was an agent of the State. The crime victim advocate in question is the Executive Director of Crisis Support Network. This agency has never been affiliated with the Pacific County Prosecutor's Office. *See* Appendix C, Declaration of Kristine Camenzind. Thirdly, the trial court balanced competing interests in allowing the advocate to sit in the first row of the gallery. It also is important to note that the trial court went out of its way to state emphatically that the advocate was not to make any gestures while the

victim was testifying. RP (6/10/09) at 117. Furthermore, at various points during the trial the court told the victim that she was not to discuss the case with anyone (other than the lawyers) outside of the courtroom. RP (6/17/09) at 73, 164, 194-195. The trial court also ordered Mr. Cearley not to make any gestures. RP (6/17/09) at 137-138. Therefore, it is not the case that the trial court abused its discretion in making decisions which balanced crime victim advocacy rights with the rights of Mr. Cearley.

Moreover, if Mr. Cearley felt that the crime victim advocate was over stepping her bounds, it was incumbent upon the Petitioner to lodge an objection. Because the Petitioner did not object to the purported gestures by the crime victim advocate in court or to any conduct by victim advocates outside of court, the Petitioner has waived this issue absent manifest constitutional error or a complete miscarriage of justice. Such an error must be manifest and truly of constitutional dimension. *State v. Kirkman*, 159 Wash.2d 918, 926-927, 155 P.3d 125 (2002). Further, the Petitioner must show how the alleged errors actually affected his rights at trial. *Id.* "In determining the effect of an irregularity . . . [courts] examine (1) its seriousness; (2) whether it involved cumulative evidence; and (3) whether the trial court properly instructed the jury to disregard it." *State v. Hopson*, 113 Wash.2d 273, 284, 778 P.2d 1014 (1989). At most, the Petitioner only has provided speculative assertions that are insufficient

to meet his burden of proof. In this connection, *see* Appendix C, Declaration of Kristine Camenzind which disputes the allegations of the Petitioner. In any event, the nature of the allegations do not fall into the "serious" category and any cumulative harm was ameliorated by the trial court's oral instructions. Hence, the Petitioner is "long" on assertions and "short" on proof. Put differently, the Petitioner has not articulated precisely how his constitutional rights were violated and how the trial court abused its discretion. The argument advanced by Mr. Cearley with regard to coaching should be rejected.

Issue No. 2

Mr. Cearley's right to a public trial was not violated by the use of a jury questionnaire; similarly, trial and appellate counsel were not ineffective in failing to challenge the use of a jury questionnaire.

Whether the right to a public trial has been violated is a question of law that is reviewed *de novo. State v. Momah*, 167 Wash.2d. 140, 217 P.3d 32 (2009). This right does not include "hearing[s] on purely ministerial or legal issues that do not require the resolution of disputed facts." *State v. Sadler,* 147 Wash.App. 97, 114, 193 P.3d 1108 (2008).

In Mr. Cearley's case, jurors filled out a questionnaire that was used by the Court, the State, and Mr. Cearley's lawyer during *voir dire*. The jurors were told to answer the questions truthfully. The jurors also were told that the information they provided was confidential and that

questionnaire would become part of the sealed court file. *See* Appendix D. Mr. Cearley did not object to the use of a jury questionnaire.

Mr. Cearley now asserts that his right to a public trial was violated, because the trial court did not conduct a hearing under *State v. Bone-Club*, 128 Wash.2d 254, 906 P.2d 325 (1995), to determine whether the questionnaire should have been sealed. The Petitioner argues that the failure of the trial court to perform the *Bone-Club* five-part balancing test requires reversal of his convictions. Personal Restraint Petition at 13, 16, 18, 19.

The Petitioner's argument is little more than a house of cards. The Supreme Court has recently decided that a trial court's sealing of juror questionnaires does not violate a defendant's right to a public trial. *See State v. Beskurt*, ___Wash.2d ___, 293 P.3d 1159 (2013). Importantly, this case also held that it was not necessary to remand for a hearing to determine whether the sealing of juror questionnaires was justified. Although *Beskurt* analyzed this issue in terms of General Rule (GR) 31, this decision is consistent with *State v. Smith,* 162 Wash.App. 833, 846, 262 P.3d 72 (2011), which held that "the trial court's sealing of the confidential juror questionnaires did not constitute a courtroom closure, and, therefore, no *Bone-club* analysis was required." *State v. Chouays*, 170 Wash.App. 114, 285 P.3d 138 (2012) is also in accord with this

reasoning. As noted in *Smith*, the trial court's sealing of juror questionnaires is not a "structural error" and does not render the trial fundamentally unfair. 162 Wash.App. at 847. Moreover, sealing the questionnaires did not impact the public's right to open information since the litigants "used 'the content of the questionnaires' to question the jurors 'in open court, where the public could observe.' " *Id.*, quoting *In re Pers. Restraint of Stockwell,* 160 Wash.App. 172, 183, 248 P.3d 576 (2011).

To the extent that cases such as *State v. Coleman*, 151 Wash. App. 614, 214 P.3d 158 (2009) hold that a *Bone-Club* analysis is required, their precedential value has been negated by *Beskurt.* In sum, *Beskurt* is controlling. The Petitioner has not shown any prejudice resulting from the sealing order, and he has not met his burden of proof to justify a reversal of his convictions. The trial court's action in sealing the juror questionnaires was proper.

Additionally, Mr. Cearley's claims that he was denied effective assistance of counsel because his trial and appellate counsel did not challenge the juror questionnaire process. Personal Restraint Petition at 11. Mr. Cearley, for whatever reason, chose not to provide any analysis to justify his contention; thus, his assertion is a conclusory statement that is insufficient to support a claim of unlawful restraint. RAP 16.7(a)(2)(i). *In re Pers. Restraint of Golden,* 172 Wash.App. 426, 430, 290 P.3d 168

(2012). Furthermore, appellate courts do not consider claims unsupported by argument or citation to legal authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wash.2d 801, 809, 828 P.2d 549 (1992). Hence, the State believes that it does not need to respond to this claim other than to say that the jury questionnaire process arguably helped the defendant pick a fair jury, because juror biases could be more readily identified. In any case, Mr. Cearley is not entitled to relief based on the jury questionnaire process that was used in this case.

Issue No. 3

Mr. Cearley was not denied the right to a public trial by the use of sidebars.

Mr. Cearley asserts that he was excluded from significant portions of the trial through the use of sidebars and conferences in chambers. Personal Restraint Petition at 19-21. Mr. Cearley fails to mention two salient points. First, the Petitioner never objected to the use of sidebars. Thus, the doctrines of waiver and invited error arguably preclude him from challenging the process used by the trial court. Secondly, there is no indication in the Report of Proceedings that Mr. Cearley would have been prohibited from attending sidebars as an observer if he had made an appropriate request.

Nevertheless, it is imperative to state that defendants traditionally have not enjoyed a right to be present when strictly legal matters are being discussed between the trial court and counsel. *See In re Pers. Restraint of Pirtle*, 136 Wash.2d 467, 483-484, 965 P.2d 593 (1998) (defendant's presence is not required for discussions in chambers about jury sequestration, wording of jury instructions and ministerial matters); *In re Pers. Restraint of Lord*, 123 Wash. 2d 296, 306, 868 P.2d 835 (1994) (defendant's presence is not required for in-chambers or bench conferences on legal matters); *State v. Sublett*, 176 Wash.2d 58, 70-78, 292 P.3d 715 (2012) (public trial right in inapplicable when a trial court considers a jury question in chambers with only counsel present); and *State v. Bremer*, 98 Wash.App. 832, 834-835, 991 P.2d 118 (2000) (a defendant has no right to be present during an in-chambers conference for legal inquiry about jury instructions).

Thus, much of the Petitioner's discussion pertaining to sidebars is a red herring. The Petitioner claims that the substance of several sidebars was not placed on the record. In particular, he asserts that the substance of two sidebars that occurred on June 17, 2009, "do not appear to have been placed on the record." Personal Restraint Petition at 20. In fact, these sidebars were summarized on June 25, 2009. RP (6/25/09) at 10-14. While the trial court could have been more punctual in placing the

substance of sidebars on the record, the timing associated with the explanation of sidebars does not constitute a violation of Mr. Cearley's right to a public trial. To be blunt, Mr. Cearley is trying to transform an alleged *de minimis* procedural issue into reversible error. This not-so-subtle prestidigitation should be rejected. The trial court did not violate Mr. Cearley's right to a public trial through the use of sidebars.

Issue No. 4

The trial court did not err in failing to conduct a hearing pertaining to alleged out-of-court contact between victim advocates and jurors; likewise, Mr. Cearley's trial counsel was not ineffective in not specifically requesting a hearing regarding this matter.

In paragraph no. 13 of Appendix C of the Personal Restraint Petition, Mr. Cearley alleges that there was contact between a couple of jurors and a victim advocate outside of the courtroom. Mr. Cearley states that he took a picture of the event. He further alleges that the trial judge told him to delete the photograph. Mr. Cearley also alleges that he told his trial counsel about this event, but his trial counsel did nothing.

The Report of Proceedings does not contain a specific colloquy regarding this matter. While Mr. Cearley alleges that the trial judge told him to delete the photograph, it is inconceivable that the trial judge would have had an *ex parte* communication with the defendant. Mr. Cearley's trial counsel only has a vague memory of this matter. *See* Addendum to

PRP, Declaration of Timothy B. Healy, paragraph no. 12. Given this "sketchy" set of purported facts, it is unclear what information, if any, was communicated to the trial judge about the extent of the contact between the victim advocate and a couple of jurors. There is no allegation that any communication took place regarding the substance of the trial. One also should note that the Declaration of Kristine Camenzind (*see* Appendix C) asserts that no contact occurred between a victim advocate and jurors in the "breezeway" outside of court.

The Petitioner nevertheless argues that the judge had a duty to conduct a hearing to determine if the defendant was prejudiced. Personal Restraint Petition at 24 – 26. Here, the alleged facts do not indicate that the trial judge was aware of inappropriate contact between a victim advocate and a couple of jurors. The trial judge may have viewed the photograph as an attempt by the defendant to intimidate others. Regardless, given the exiguous "facts" presented by the Petitioner, the trial court did not abuse its discretion in not conducting a hearing on the record, when the nature of this incident was opaque. Moreover, Mr. Cearley's trial counsel was clearly in a position to raise any substantive objections and to seek appropriate relief from the trial court. The fact that Mr. Cearley's trial counsel chose not to contest this matter indicates that the issue was not germane to the overall conduct of the trial.

Further, it must be noted that any theoretical prejudice was ameliorated by the trial court's repeated instruction to the jury throughout the trial to not discuss the case with anyone and to not allow anyone to discuss the case with them. *See, e.g.,* RP (6/17/09) at 133, 260; RP (6/18/09) at 266; RP (6/23/09) at 131-132, 228 – 229; RP 6/24/09) at 112-113, 146, 246-247; RP 6/25/09) at 78-79, 205; RP 6/26/09) at 206; and RP (6/29/09) at 234. The trial court also used WPIC 1.02 (instruction no. 1) to convey to the jury that they only could consider testimony from witnesses, stipulations, and exhibits that were admitted into evidence in reaching their decision. Since a jury is presumed to follow the instructions of the court, *State v. Kroll,* 87 Wash 2d 829, 837, 558 P.2d 173 (1976), one has to assume that he jury heeded the numerous admonitions of the trial court to avoid discussing the case with anyone. Beyond the Petitioner's bare allegation of misconduct, there is no indication that the alleged incident prejudiced the minds of the jurors against the defendant. The Petitioner has not shown that the "factual allegations are based on more than speculation, conjecture, or inadmissible hearsay." *In re Pers. Restraint of Rice,* 118 Wash.2d 876, 886, 828 P.2d 1086 (1992).

Additionally, as a corollary to his main argument, Mr. Cearley contends that his trial counsel was ineffective in not requesting a hearing. The Petitioner claims that his trial counsel's inaction "fell below a

reasonable standard of practice." Personal Restraint Petition at 25. "To prevail on an ineffective assistance of counsel claim, the defendant must show that (1) defense counsel's representation was deficient, in that it fell below an objective standard of reasonableness and (2) the deficient performance prejudiced the defendant." *State v. Sutherby,* 165 Wash.2d 870, 883, 204 P.3d (916 (2009), citing *State v. McFarland,* 127 Wash.2d 322, 334-335, 899 P.2d 1251 (1995) (applying the two-prong test of *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052 80 L.Ed.2d 674 (1984)). Counsel is presumed to be effective, "and the defendant must show there was no legitimate strategic or tactical reason for counsel's action." *Sutherby,* 165 Wash.2d at 883. The Petitioner also must demonstrate that but for the error, the result of the trial would have been different. *State v. Courtney,* 137 Wash.App. 376, 383-384, 153 P.3d 238 (2007).

The first prong of the *Strickland* test has not been met here. There was a legitimate strategic or tactical reason not "to push" this issue. The judge could have focused on the picture-taking activity of Mr. Cearley which would not have redounded to his benefit. Further, any likely remedy, *e.g.,* an admonishment to the victim advocate, would have been inconsequential in the overall scheme of things. Therefore, it was not

unreasonable for Mr. Cearley's trial counsel to monitor the situation and take no formal action.

Equally important, for Mr. Cearley to succeed in demonstrating ineffective assistance of counsel, he must show that the result of the trial would have been different "but for" his trial counsel's deficient representation. *McFarland*, 127 Wash.2d at 337. Even if the trial court had conducted a formal hearing "to flush out" the particulars of this incident, it is inconceivable that any resolution of this issue would have changed the outcome of the trial. This is especially true since the trial court repeatedly admonished the jury not to consider any comments made outside of the courtroom proceedings. Thus, Mr. Cearley's ineffective assistance of counsel argument fails.

Issue No. 5

Mr. Cearley's trial counsel was not ineffective by failing to request a psychological evaluation of the victim or by failing to retain an expert on child abuse interview techniques.

Mr. Cearley claims that his trial counsel was ineffective because he made no effort to request a psychological evaluation of the victim. The Petitioner asserts that evidence existed which showed the victim suffered from significant depression which produced episodes of lying and anger. Personal Restraint Petition at 26-28. Granting a mental examination of a

complaining witness is within the discretion of the trial court. *State v. Demos,* 94 Wash.2d 733, 738, 619 P.2d 968 (1980); *State v. Braxton*, 20 Wash.App. 489, 492, 580 P.2d 1116 (1978). A trial court's decision is reviewed under an abuse of discretion standard, i.e., no reasonable person would have taken the position adopted by the trial court. *State v. Castellanos,* 132 Wash.2d 94, 97, 936 P.2d 1353 (1997). The burden rests with Mr. Cearley to clearly establish substantial prejudice. *State v. Stamm*, 16 Wash.App. 603, 605, 559 P.2d 1 (1976). The trial court needs a compelling reason to order a psychiatric/psychological examination. *Demos,* 94 Wash.2d at 738. A compelling reason does not exist as a matter of law simply because it is a case of " 'his word against hers.' " *State v. Tobias*, 53 Wash.App. 635, 637, 769 P.2d 868 (1989). When no compelling reason for a psychiatric examination can be shown, traditional means of assessing witness credibility and perceptual ability are sufficient. *Demos,* 94 Wash.App. at 738.

In this instance, the Petitioner asserts that the victim was angry toward him and that she "lies most of the time." Personal Restraint Petition at 26-28. These claims are essentially assertions that attack the credibility of the victim. Unfortunately for the Petitioner, psychiatric/psychological testimony is irrelevant when the complaining

witness' credibility is questioned due to a lack of corroboration. *Tobias*, 53 Wash.App. at 637.

In essence, the Petitioner is now arguing that his trial counsel should have attempted to force a psychological evaluation of the victim in order to attack her credibility. But the credibility of a witness is a matter for the jury -- not psychiatrists or psychologists. *Braxton*, 20 Wash.App. at 491. Consequently, Mr. Cearley's trial counsel had no reason to believe that there was a compelling reason to request a psychological evaluation of the victim based on the concerns about anger and lying. This would not have advanced his theory of the case, viz., the victim was mistaken as to who sexually assaulted her. RP (6/16/09) at 18-33; RP (6/29/13) at 191-223. Therefore, it cannot be said that Mr. Cearley's trial counsel was deficient, because the decision to blame another person for the sexual assaults was a matter of strategy and tactics. Under such circumstances, counsel is presumed to be effective. *Sutherby*, 165 Wash.2d at 883. Similarly, there is no evidence that demonstrates that the Petitioner was prejudiced by the failure to request a psychological evaluation. Thus, the Petitioner's ineffective assistance of counsel argument fails under both prongs of the *Strickland* test.

With regard to the failure to obtain an expert on child abuse interview techniques, the Petitioner claims that "[t]rial counsel did not

investigate the availability of an expert to testify to the improper and coercive interviews conducted in this case." Personal Restraint Petition at 30. At the beginning, the State would point out that there is nothing in the record which indicates whether Mr. Cearley's trial counsel did or did not consider calling an expert on child abuse interview techniques. The record is silent on this point. However, since no such expert was called by the defense, the question here initially turns on whether the failure to call an expert on child abuse interview techniques constitutes performance that falls below an objective standard of reasonableness. The Petitioner posits that such testimony would have been helpful to the jury and that there was not tactical reason for not conducting this investigation. *Id.*

This last assertion is by no means obvious. The theory of the defense was that the victim was mistaken as to who sexually assaulted him. The defense was able to argue that the victim's first disclosures to her classmates were equivocal, i.e., the disclosures did not definitively implicate Mr. Cearley. If the defense had attempted to attack directly the legitimacy of the interview techniques used by the State's witnesses, the focus of the trial would have shifted to questions pertaining to interview methodology. While it may have been possible for a defense expert to effectively put the State's professional witnesses "on trial," the jury could have perceived this approach as an attempt to obfuscate the real question

posed by the defense, viz., who had sexual relations with the victim? By not choosing to call an expert on interview techniques, the defense reasonably could have wanted to make their case more parsimonious and not "confuse" the jury with a matter that could be viewed as peripheral. Additionally, the defense had to consider the extent to which it wanted to make a long trial even longer. Under these circumstances, not calling an expert witness on child abuse interview techniques is not *per se* unreasonable and does not violate the first prong of the *Strickland* test.

More importantly, to get any traction here the Petitioner must show that the result of the trial would have been different if the defense had called an expert to testify about child abuse interview techniques. The jury was able to observe the demeanor of the victim when she testified and was able to formulate an opinion with regard to her credibility. The defense was able to point out purported inconsistencies between the victim's testimony in court and her disclosures to social workers and medical personal. Thus, it is difficult to see how the introduction of issues pertaining to interview methodology reasonably would have changed the outcome of the trial. The Petitioner once again has failed to meet his burden of proof pertaining to the second prong of the *Strickland* test. His ineffective assistance of counsel argument pertaining to the failure to call an expert witness should be rejected.

Issue No. 6

Mr. Cearley does not have a valid ineffective assistance of counsel claim based on his trial counsel's purported disrespectful attitude.

Mr. Cearley claims that his trial counsel was repeatedly rude to him during the trial and that this rudeness disparaged Mr. Cearley in the eyes of the jury. Personal Restraint Petition at 31-32. Mr. Cearley alleges that his trial counsel treated him as a "bad man" and that trial counsel's not-so-overt actions "spoke volumes" *Id.* at 34-35.

Upon closer inspection, these allegations are tendentious. Mr. Cearley is trying to make a mountain out of a molehill. The relevant allegations are contained in paragraphs nos. 7-9 of Appendix C of the Personal Restraint Petition. These allegations read as follows:

> 7. My attorney Mr. Healey was nice to me until the day that the jury came in to be questioned for voir dire. I will never forget what happened at the very beginning of my trial. My attorney introduced me to the jury and at that point he was still being nice to me. After the judge read my charges to the large panel of jurors though, several of the jurors got really upset and two of them ran out of the court room. After they got things settled down, my attorney was never nice to me again.
>
> 8. My attorney would not look at me and for most of the trial, he kept his shoulder turned against me. When I would try to talk to my attorney and ask him questions, he was very short with me and would not answer my questions. He even got angry with me when I tried to ask questions and so I just quit asking questions after a while.

> My attorney only acted like this in front of the jury though. During breaks he was nicer.
>
> 9. At one point I asked him why he was mad and he told me not to pay any attention to how he was acting because it was just "part of the plan." He never explained to me what this plan was and his treatment was so embarrassing that I would often turn red and like I said before, I just quit trying to ask questions or make suggestions because I was so afraid of being embarrassed.

The essence of Mr. Cearley's contentions is that his trial counsel was not nice to him and that his trial counsel ignored his questions. While the Petitioner asserts that the quality of the communication between himself and trial counsel was poor, there is an obvious explanation for why Mr. Cearley felt slighted. As any trial attorney knows, it is often difficult, if not impossible, to be attentive to the client's perceived "needs" and to be "on top" of the ebb and flow of the trial. In other words, a trial attorney often times must focus exclusively on the questions being asked to witnesses and their responses. Trying to keep a client informed instantaneously of the nuances which are occurring can be nothing short of deleterious.

Hence, what Mr. Cearley perceived as "slights" could be nothing more than trial counsel focusing intently on the immediate matters at hand.

Obviously, every trial counsel has a particular "trial presence."[1] What works for one litigant may not work for another. In this regard, however, it is interesting to note that Mr. Cearley states that his trial counsel was nicer to him during breaks. This shows that trial counsel's "game face" during the trial was not meant to annoy Mr. Cearley but was a necessary part of providing competent representation.

Regardless of how one assesses the demeanor and style of Mr. Cearley's lawyer while the trial was being conducted, these allegations do not overcome the strong presumption that trial counsel was effective. *State v. Thomas*, 109 Wash.2d 222, 226, 743 P.2d 816 (1987). In this regard, *see* the Declaration of Kristine Camenzind, Appendix C, which states that Mr. Cearley's trial counsel vigorously defended Mr. Cearley. There also is not a reasonable probability that a more "client centric" style on the part of trial counsel would have altered the outcome of the case. Thus, the Petitioner has failed to show that either prong of the *Strickland*

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[1] In this vein, it is difficult to assess the comment in paragraph no. 9 of Appendix C of the Personal Restrain Petition, wherein Mr. Cearley's trial counsel purportedly says that his demeanor is "part of the plan." Without more details pertaining to the context of this comment, this interchange is obfuscatory.

test has been met. The purported "cold" demeanor of trial counsel does not constitute ineffective assistance of counsel.[2]

Issue No. 7[3]

Mr. Cearley's right to a fair jury trial was not violated based on an allegation that two jurors slept through a material portion of the trial; likewise, trial counsel was not ineffective for failing to notice the purported sleeping jurors and for failing to move for a mistrial.

Mr. Cearley alleges that two jurors slept through significant portions of the trial. Appendix C of Personal Restraint Petition, paragraph nos. 14-16. The Report of Proceedings does not indicate that any officer of the court observed a juror sleeping. Also, Mr. Cearley's contention is rebutted by the Declaration of Kristine Camenzind. *See* Appendix C. Obviously, the trial court cannot take any action when it does not observe a juror sleeping or when this issue is not brought to the attention of the court. In this connection, if Mr. Cearley "truly believed that one or more jurors had missed significant portions . . . [of the trial], the onus was on him to ask the court to do something about it." *United States v. Moore,*

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[2] As an aside, it should be noted that defense counsel can be "boorish, contemptuous, discourteous, disrespectful, insolent, obdurate, obnoxious, offensive, rude, and uncouth," and at the same time not deprive his client of effective assistance of counsel. *State v. Garrett*, 124 Wash.2d 504, 522, 881 P.2d 185 (1994).

[3] The Petitioner has incorrectly labeled this issue as 6A and 6B. Personal Restraint Petition at 35. All of the subsequent issues argued by the Petitioner are also incorrectly denominated.

580 F.2d 360, 365 (9th Cir. 1978). "Unless counsel objects to the jurors' inattentiveness during the trial, the error is waived on appeal." *State v. Hughes*, 106 Wash.2d 176, 204, 721 P.2d 902 (1986).

Here, Mr. Cearley states that his trial counsel seemed unconcerned. Appendix C of Personal Restraint Petition, paragraph no. 16. Mr. Cearley, unfortunately, does not indicate whether he specifically told his trial counsel about this issue. The Addendum to PRP which contains a declaration from Mr. Cearley's trial counsel also does not address this issue. Given the case law cited above, neither Mr. Cearley nor his trial counsel can fail to object and then expect to gain relief when they are unhappy with the juror verdict. Mr. Cearley has essentially adapted a "gamesmanship approach to criminal justice" which has been strongly excoriated. *United States v. Kopel*, 552 F.2d 1265, 1275-1276 (7th Cir. 1977). Mr. Cearley's argument should be rejected.

With regard to the claim of ineffective assistance of counsel, Mr. Cearley also cannot prevail. The Petitioner has cited no authority for the proposition that trial counsel is *per se* ineffective if he fails to notice that a juror is sleeping. Correspondingly, if trial counsel perceived that a juror was sleeping, he cannot "game" the system and do nothing in the hope that an appeal issue will be created. Once again, the Petitioner has not shown

that either prong of the *Strickland* test has been satisfied. Therefore, this ineffective assistance of counsel claim fails.

Issue No. 8

Mr. Cearley is not entitled to a new trial based on the doctrine of cumulative error.

The cumulative error doctrine stands for the proposition that a defendant may be entitled to a new trial when multiple errors cumulatively produce a trial which is fundamentally unfair. *State v. Greiff*, 141 Wash.2d 910, 929, 10 P.3d 390(2000). As argued throughout the State's Brief, the Petitioner has not demonstrated that he is entitled to relief based on any of the issues that he has raised. Therefore, the cumulative error doctrine is not applicable here. As stated in *State v. Miles*, 73 Wash.2d 67, 70, 436 P.2d 198 (1968), "the final measure of error in a criminal case is not whether a defendant was afforded a perfect trial, but whether he was afforded a fair trial." Mr. Cearley received a fair trial; the question of whether Mr. Cearley was afforded a perfect trial is inapposite. Mr. Cearley is not entitled to relief under the cumulative error doctrine.

Issue No. 9

The trial court did not err in giving an instruction to the jury pertaining to the "position of trust" aggravating factor; Mr. Cearley's trial counsel was not ineffective in failing to object to this instruction;

and the invited error doctrine prevents Mr. Cearly from obtaining the relief he seeks.

Mr. Cearly now challenges instruction No. 28 which reads as follows:

> A defendant uses a position of trust to facilitate a crime when the defendant gains access to the victim of the offense because of the trust relationship. In determining whether there was a position of trust, you should consider the length of the relationship between the defendant and the victim, the nature of the defendant's relationship to the victim, and the vulnerability of the victim because of age or other circumstance. There need not be a personal relationship of trust between the defendant and the victim. It is sufficient if a relationship of trust existed between the defendant and someone who entrusted the victim to the defendant's care.

Mr. Cearley claims that this instruction undercuts the "nexus" requirement and requires "less proof" than the plain language of the statute. *See* RCW 9.94A.535(3)(n). Personal Restraint Petition at 41. The instruction in question is based on WPIC 300.23. The trial court's instruction did not deviate from the language contained in WPIC 300.23. This language comports with case law which holds that a defendant abuses a position of trust to facilitate the offense when the defendant uses his relationship to the victim, or to the person who entrusted the victim to the defendant's care, to obtain access to the victim. *See, e.g., State v. Bissell,* 53 Wash. App. 499, 767 P.2d 1388 (1989). In general, when considering whether the defendant is in a position of trust, courts examine a number of

factors such as the length of the relationship, the intensity of the relationship, and the victim's inclination to bestow trust. *See* Fine and Ende, 13B Washington Practice Criminal Law § 3915 (2nd Ed.). In this instance, WPIC 300.23 accurately captures the case law pertaining to what constitutes on abuse of trust. The Petitioner wants to read the statute narrowly, when case law provides an expansive definition, In particular, when the victim is a child, a sufficient relationship of trust is established by the defendant's status as a neighbor, babysitter, parent, or other close relative. *State v. Grewe*, 117 Wash.2d 211, 218-221, 813 P.2d 1238 (1991) (neighbor); *State v. Russell*, 69 Wash.App. 237, 252, 848 P.2d 743 (1993) (victim's father); *State v. Bedker*, 74 Wash.App. 87, 95-96, 871 P.2d 673 (1994) (victim's half-brother); *State v. Stevens*, 58 Wash.App. 478, 501, 794 P.2d 38 (1990) (babysitter); and *State v. Harp*, 43 Wash.App. 340, 343, 717 P.2d 282 (1986) (victim's uncle). Thus, the Petitioner's argument should be rejected on substantive grounds.

Equally important, the Petitioner is not in a position to claim that his trial counsel was deficient because he did not challenge this instruction. Personal Restraint Petition at 41. Trial counsel cannot be faulted for not challenging a standard WPIC when the WPIC has not been questioned in an appellate decision *State v. Kyllo*, 166 Wash.2d 856, 866-869, 215 P.3d 177 (2009); *State v. Studd,* 137 Wash.2d 533, 551, 973 P.2d

1049 (1999). In the present matter, the Petitioner has not provided any case law which shows that the validity of WPIC 300.23 has been questioned by the judiciary. Hence, the Petitioner's argument fails.

Lastly, the Petitioner should not be able to get "a second bite of the apple" based on the invited error doctrine. A defendant cannot argue to an appellate court that a given instruction was constitutionally infirm, when he assented to the instruction at the trial court level. As stated in *State v. Henderson:*

> The law of this state is well settled that defendant will not be allowed to request an instruction or instructions at trial, and then later, on appeal, seek reversal on the basis of claimed error in the instruction or instructions given at the defendant's request. To hold otherwise would put a premium on defendants misleading trial courts; this we decline to encourage.

114 Wash.2d 867, 868, 792 P.2d 514 (1990).

Accordingly, the holding in *Henderson* precludes the Petitioner from challenging the validity of Instruction No. 28.

Issue No. 10

The trial court did not err by imposing a mandatory minimum sentence above the standard range based on Mr. Cearley's high offender score.

Mr. Cearly was convicted of five counts of Rape of a Child in the First Degree and one count of Child Molestation in the First Degree. For the five counts of Rape of a Child in the First Degree, the jury, *inter alia*,

found an aggravating factor of abuse of trust. RCW 9.94A.535(3)(n). The trial court also determined under RCW 9.94A.535(2)(c) that "[t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished." Based on RCW 9.94A.535(3)(n) and RCW 9.94A.535(2)(c), the trial court concluded that there were substantial and compelling reasons to impose an exceptional sentence. *See* Appendix B.

Because Mr. Cearley was sentenced under the provisions of RCW 9.94A.507, each of the five counts of Rape of a Child in the First Degree required the trial court to impose a maximum sentence of life. The "standard" minimum sentence for each of these counts was between 240 and 318 months. Similarly, the conviction for Child Molestation in the First Degree required the trial court to impose a maximum sentence of life; the "standard" minimum sentence for this count was between 149 and 198 months. The trial court chose to exercise its discretion under RCW 9.94A.507(3)(c)(i) and imposed an exceptional sentence for the minimum term.[4] The trial court imposed an exceptional minimum term of 800 months for each of the five counts involving Rape of a Child in the First Degree. The trial court imposed a "standard" minimum sentence of 198

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[4] Under RCW 9.94A.507, the actual sentence served by an offender is determined by the Indeterminate Sentence Review Board.

months for the count involving Child Molestation in the First Degree. The time imposed on each of the counts was ordered to run concurrently.

The trial court justified its decision to impose an exceptional minimum sentence based on abuse of trust and on the defendant's high offender score which would result in some of the offenses going unpunished. The trial court also decided that each of these reasons by itself was sufficient to impose the exceptional minimum sentence that was ordered. *See* Appendix B.

The Petitioner argues that the trial court's decisions to impose an exceptional minimum sentence based on his "high offender score" violated his right to a jury trial under the federal and state constitutions. Personal Restraint Petition at 42 – 49.

Conceptually, there is no logical difference between a minimum sentence under RCW 9.94A.507 which is outside of the standard range and a "regular" sentence under RCW 9.94A.535 which is outside of the standard range. The gravamen of the Petitioner's argument is that any exceptional sentence upward must be based on a finding by the trier of fact that an aggravating circumstance exists beyond a reasonable doubt. The Petitioners asserts that since the jury did not find that Mr. Cearley had a "high offender score," this aggravating factor cannot be used as a basis for an exceptional sentence.

The problem with the Petitioner's argument is that the trial court is not engaging in "fact finding" when it invokes the language contained in RCW 9.94A.535(2)(c). "[T]he only factors the trial court relies upon in imposing an exceptional sentence under RCW 9.94A.535(2)(c) are based on criminal history and the jury's verdict on the current convictions. . . . Both fall under the *Blakely*[5] prior convictions exception, as no judicial fact finding is involved." *State v. Alvarado,* 164 Wash.2d 556, 566-567, 192 P.3d 345 (2008).

Since the *Alvarado* Court has held that the application of RCW 9.94A.535(2)(c) does not involve judicial fact finding, the Petitioner cannot maintain that *Blakely* requires a jury to make a finding regarding the defendant's high offender score. *Alvarado* squarely stands for the proposition that the imposition of an exceptional sentence through the application of RCW 9.94A.535(2)(c) does not offend a defendant's Sixth Amendment right to a jury trial. 164 Wash.2d at 569. *See also State v. Chambers,*____ Wash.2d.____, 293 P.3d 1185 (2013).

The Petitioner also argues that the Washington State Constitution is more protective of the right to a jury trial than the U.S. Constitution. Personal Restraint Petition at 44 – 49. The Petitioner cites to *State v.*

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[5] *Blakely v. Washington,* 542 U.S. 296, 124 S.Ct.2531, 159 L.Ed.2d 403 (2004).

Gunwall, 106 Wash.2d 54, 720 P.2d 808 (1986) and analyzes the *Gunwall* factors in an attempt to show that the Washington State Constitution requires a jury finding with regard to a defendant's high offender score. As noted in *State v. Smith*, 150 Wash.2d 135, 156, 75 P.3d 934 (2003), "the Washington Constitution generally offers broader protection of the jury trial right than does the federal constitution." However, the *Smith* Court went on to say that juries did not determine sentences at the time the State Constitution was adopted and that defendants do not have a right to a jury trial with regard to their prior convictions. *Id.*

In the present case, the trial court imposed an exceptional sentence based on the number of current convictions that were found by the jury. The trial court did not make factual findings that were within the province of the jury. Just like in *Smith*, the sentencing court here looked to the defendant's criminal history to determine the appropriate punishment. This determination rightly rests with the judge because a jury does not determine punishment. The extensive analysis in *Smith* does not lead to the conclusion that a sentencing factor (as opposed to an element of the charge) must be decided by a jury. On the contrary, *Smith* stands for the proposition that the Washington State Constitution allows a judge to make a sentencing decision that is based on a defendant's high offender score.

Under *Smith* a defendant's criminal history is not the kind of "fact" that needs to be proved to a jury.

In essence, the Petitioner misses the mark in essentially trying to label the question of a high offender score as an element of the charge rather than a sentencing factor. Personal Restraint Petition at 48. The Petitioner's argument with regard to State constitutional requirements should be rejected.

D.

CONCLUSION

Based on the analysis articulated above, the Petitioner has not demonstrated that he experienced a constitutional error that resulted in actual and substantial prejudice or that a non-constitutional error produced a complete miscarriage of justice. None of the arguments advanced by Mr. Cearley has merit. Accordingly, the relief that Mr. Cearley seeks in his Personal Restraint Petition should be denied.

Respectfully submitted this 12th day of April, 2013.

David J. Burke

DAVID J. BURKE, WSBA#16163
Pacific County Prosecuting Attorney

APPENDIX "A"

Not Reported in P.3d, 2011 WL 5184189 (Wash.App. Div. 2)
(Cite as: 2011 WL 5184189 (Wash.App. Div. 2))

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE RCWA 2.06.040

Court of Appeals of Washington,
Division 2.
STATE of Washington, Respondent,
v.
Steven C. **CEARLEY**, Appellant.

No. 39823–1–II.
Nov. 1, 2011.

Appeal from Pacific County Superior Court; Honorable Michael J. Sullivan, J.
Eric J. Nielsen, Jennifer J. Sweigert, Nielsen Broman & Koch PLLC, Seattle, WA, for Appellant.

David John Burke, Attorney at Law, South Bend, WA, for Respondent.

UNPUBLISHED OPINION

HUNT, J.

***1** Steven C. **Cearley** appeals his convictions for five counts of first degree child rape and one count of first degree child molestation, as well as his exceptional sentence for his child rape convictions. He argues that the trial court (1) made several incorrect evidentiary rulings about the victim's hearsay statements and (2) erroneously instructed the jury that, in order to answer "no" to the aggravating factor questions on the special verdict forms, it must unanimously have reasonable doubt about the answers to the questions. We affirm.

FACTS

I. Background

ADM [FN1] was born in 1998. In November 2003, she and her younger brother were living in Aberdeen with her aunt, Mary **Cearley**,[FN2] Mary's then-husband, Rich Clauson, and Mary's best friend's brother, Ryan Medley. In October 2004, Mary left Clauson and took ADM and her brother with her. Medley also went with Mary and the children and stayed with them at a nearby motel.

FN1. It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the body of the opinion to identify the juveniles involved.

FN2. For the sake of clarity, we refer to Mary **Cearley** simply as Mary. We intend no disrespect.

A. Child Rape and Molestation

In the fall of 2005, Mary started dating Steven Craig **Cearley**; Mary eventually married and had children with **Cearley**. Some months later, Mary, ADM, and ADM's brother moved in with **Cearley** in a house in Raymond. In April 2006, Mary and **Cearley** moved to a residence in Montesano; at that time, ADM and ADM's brother moved into an apartment with Mary's mother. Approximately six to eight months later, ADM moved back in with Mary and **Cearley**; Medley moved back in with the family at the Montesano residence, too. "More than once" [FN3] over a two-year period, **Cearley** kissed ADM, groped her breasts, performed oral sex on her, and penetrated her anally and vaginally, with the last incident occurring in November 2007.

FN3. The record is not clear about how many times the incidents occurred.

B. ADM's Disclosures

At some point in 2006 or 2007, ADM told several of her friends at school that she "was being sexually abused." [FN4] Verbatim Report of Proceedings (VRP) (June 24, 2009) at 93. Initially, she did not disclose her abuser's identity; but eventually she told at least one friend that it was her "Uncle Steve" who was sexually abusing her. VRP (June 24, 2009) at 108. Two of ADM's friends told their

parents about her disclosures; and one of these parents advised the elementary school's principal, Joan Leach. Leach contacted Child Protective Services (CPS) and the "Crisis Support Network." VRP (June 18, 2009) at 147. On November 20, Pacific County CPS received a referral about ADM and assigned Erin Miller to the case.

> FN4. Although the dates of ADM's disclosures to her classmates are not clear from the record, these disclosures apparently occurred over a period of several months.

The next day, Leach brought ADM from class to her office. With Miller and Crisis Support Network employee Kris Camenzind also present, Miller turned on a tape recorder and began to interview ADM. ADM denied repeatedly that anything was wrong or that "Uncle Steve" had done something to her.[FN5] Clerk's Papers (CP) at 657–69.

> FN5. After 46 minutes of interviewing, Miller turned off the recorder and left ADM and Leach alone in Leach's office for approximately eight minutes. Below, the parties hotly disputed the conversation that took place between Leach and ADM during this break; the content of that conversation, however, has no bearing on our analysis.

About an hour into the interview, Miller stated to ADM, "[Y]ou said that if something happened, you would tell your friends, right? And, well, one of your friends said that something happened.... They said that you told them something happened. So I need to know more about that. You're looking very uncomfortable." CP at 670. When ADM responded that she was "kind of" feeling uncomfortable, Miller asked why she felt uncomfortable. CP at 670. ADM replied, "[T]here's something I'm not telling you.... [H]e said it could break up the whole family." CP at 670. When Miller asked, "Who said it could break up the whole family?" ADM said, "Uncle Steve." CP at 670. Miller then asked ADM, "So can you tell me more?" And ADM responded, "I don't really like Uncle Steve." CP at 671. When Miller stated, "Okay. Tell me why," ADM answered, "He touches me." CP at 671. ADM went on to describe **Cearley's** sexual abuse of her, describing in detail multiple episodes of anal penetration.

***2** About an hour and a half into the interview, Pacific County Sheriff's Deputy Jonathan Ashley, whom Miller had contacted about ADM the day before, arrived at Leach's office and participated in the interview. Later that day, Ashley and another sheriff's deputy executed a search warrant at **Cearley's** residence, where they seized a pair of ADM's jeans; the semen in the interior crotch area of these jeans matched **Cearley's** DNA.

C. Medical Examination

Also later that same day, Camenzind took ADM to the Providence St. Peter Hospital's Sexual Assault Clinic in Olympia. Before examining ADM, nurse practitioner Laurie Davis asked ADM with whom she lived. ADM replied, "My aunt and uncle right now. But my uncle [ ]." [FN6] CP at 709. When Davis asked, "Okay. Is your uncle the one who did this?" CP at 709. ADM replied, "Mm-hm." CP at 709.

> FN6. The transcript of Davis's examination of ADM reads exactly as quoted above: "But my uncle [ ]." CP at 709.

Later on, Davis told ADM, "[Y]ou need to tell me what has happened that brought you here today." CP at 715. ADM responded, "My uncle ... sexually harasses me." CP at 715. ADM told Davis that **Cearley** had "touche[d]" her both under and over her clothes. CP at 716. ADM also described one incident in which **Cearley** was "pushing" on her "tush." CP at 718.

D. December 20, 2007 Interview

On December 20, Miller interviewed ADM at the South Bend Children's Administrative Office in

the presence of Camenzind, who also recorded this second interview. The prosecutor listened and watched from behind a one-way mirror.[FN7] Miller told ADM, (1) "[W]e're going to talk a little bit more about that time" when Miller first interviewed ADM in Leach's office; and (2) "when we talked before, we talked about some things that were going on at home, um, in regards to your Uncle Steve." CP at 733–34. ADM described incidents when **Cearley** had "stuck something in [her]," which she thought was his "male part" "touch[ing]" her "tush" and "girl area." CP at 739, 759. ADM further described incidents of **Cearley's** kissing her, groping her breasts, and having her perform sexual acts on him.

FN7. During the child hearsay hearing, Miller testified that the purpose of this second interview was "to more clearly define time frames and what kinds of incidents occurred." VRP (June 10, 2009) at 297.

II. Procedure

The State charged **Cearley** with six counts of first degree rape under RCW 9A.44.073, with aggravating factors, and one count of first degree child molestation under RCW 9A.44.083. The State alleged that the first degree molestation occurred between March 1, 2005, and April 6, 2006, and that the first degree rapes occurred from September, October, and November 2007.

A. Evidentiary Rulings

Cearley filed a motion in limine to exclude all hearsay statements. **Cearley** also asked the trial court to "find that the complainant's hearsay statements are not admissible under statutes or evidence rules concerning hearsay." CP at 121. **Cearley** argued that the following statements were inadmissible: (1) ADM's November 21 statements in Leach's office that "Uncle Steve [**Cearley**] touched her," CP at 136; (2) ADM's statements to Davis; and (3) ADM's December 20 interview statements. The trial court held a child hearsay hearing, considered the *Ryan* factors,[FN8] and ruled ADM's statements admissible.

FN8. *State v. Ryan,* 103 Wn.2d 165, 169–78, 691 P.2d 197 (1984).

B. Trial Testimony

***3** ADM testified about **Cearley's** sexual abuse. On cross-examination, **Cearley** (1) noted inconsistencies between ADM's trial testimony and her earlier interview with **Cearley's** defense counsel; (2) questioned ADM about the November 21 interview in which she had initially told Miller that **Cearley** had "never touched" her and that she "felt safe" with **Cearley**, VRP (June 17, 2009) at 105–06; and (3) suggested that it was Medley who had molested and raped her, not **Cearley**.

Miller testified about the statements that ADM made during the November 21 and December 20 interviews.[FN9] Davis testified about ADM's statements during the medical examination and the examination itself. **Cearley** cross-examined Davis about **Cearley's** having tested positive for herpes and ADM's having tested negative. Leach testified that, during the November 21 interview, (1) she did not tell ADM that "she needed to say it was Uncle Steve" or that "[she] needed to disclose any particular type of activity that was going on at home";[FN10] and (2) "[t]he only thing that I would have said to her was, 'This is a safe place for you to be.' "[FN11] Leach also recounted some of the statements that ADM had made during the November 21 interview.

FN9. VRP (June 17, 2009) at 257 ("[ADM] reported that she was being touched by her Uncle Steve."); VRP (June 18, 2009) at 77 ("And then she described the incident of him and her laying [sic] down and him pushing on her tush."), 78–88 (describing other hearsay statements).

FN10. VRP (June 18, 2009) at 149.

FN11. VRP (June 18, 2009) at 150.

Ashley testified that, in his presence, ADM had described an incident in which "she had been inappropriately touched by her uncle" by " 'push[ing] in her tush.' " VRP (June 23, 2009) at 17. Ashley also described ADM's other statements about this incident. After the State rested, **Cearley** testified and repeatedly denied having sexually abused ADM.

C. Jury Instructions

For all six counts of first degree child rape, the trial court instructed the jury to determine whether certain aggravating factors existed.[FN12] The trial court also instructed the jury that, if it found **Cearley** guilty of any of the first degree child rape charges, it must use special verdict forms to answer whether there existed aggravating factors for each conviction. **Cearley** proposed and the trial court adopted the following pertinent language in Jury Instruction 19:

> FN12. The aggravating circumstances were (1) "[w]hether the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time"; and (2) "[w]hether the defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense." CP at 547–52 (Jury Instructions 21–26).

> Because this is a criminal case, all twelve of you must agree in order to answer the special verdict forms. In order to answer the special verdict forms "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".
> CP at 537 (Jury Instruction 19).

The jury found **Cearley** guilty of five of the six first degree child rape counts (counts one and three through six) and of the sole first degree child molestation count. For the special verdicts on the five first degree child rape convictions, the jury unanimously answered "yes" to each question on each form, thus finding that both aggravating circumstances were present for each of the five first degree child rape convictions. *See* CP at 555, 557–60.

At sentencing, the trial court stated that the standard range for **Cearley's** five first degree child rape convictions was between 240 to 318 months of confinement. The trial court explained that the jury's "yes" answers on the special verdict forms for the first degree child rape convictions were an "exceptional and compelling" reason to impose exceptional sentences.[FN13] VRP (Sept. 24, 2009) at 25–26. The trial court imposed an exceptional sentence of 800 months by running the sentences consecutively. Next, the trial court imposed 198 months for **Cearley's** first degree child molestation conviction. The trial court ordered **Cearley** to serve his sentences for the first degree child rape convictions and the first degree child molestation conviction concurrently.

> FN13. The trial court cited two additional reasons for the exceptional sentence: (1) **Cearley** "ha[d] crimes that would go unpunished" under a standard range sentence because **Cearley** "was off the Richter scale in terms of how ... the sentencing guidelines go"; and (2) the Department of Corrections' Pre–Sentence Investigation Report noted that **Cearley** showed no " 'remorse for his actions,' " and **Cearley** did not refute that statement. VRP (Sept. 24, 2009) at 27–28, 31.

***4 Cearley** appeals his convictions and his exceptional sentences for his rape convictions.

ANALYSIS

I. Evidentiary Rulings

Cearley first argues that (1) the trial court erred by admitting ADM's statements to Miller, Ashley, and Davis on November 21 and December 20, 2007, under RCW 94.44.120's child hearsay exception because the statements do not satisfy the

statutory requirements; and (2) in the alternative, the trial court erred by admitting ADM's multiple repetitive child hearsay statements through the testimonies of Miller, Ashley, and Davis, which violated ER 403 by bolstering the veracity of ADM's sexual abuse allegations.[FN14] Because we hold that error, if any, was harmless, these arguments fail.

> FN14. **Cearley** also assigns error to the trial court's finding that "A.D.M.'s statements were not the result of undue influence by Joan Leach." Br. of Appellant at 1. But **Cearley** provides no argument on this point, contrary to RAP 10.3(6). Therefore, we do not further address it.

A. Standard of Review

We review evidentiary rulings for abuse of discretion. *State v.. Morales,* 154 Wn.App. 26, 37, 225 P.3d 311, *review granted,* 169 Wn.2d 1001 (2010). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons; an abuse of discretion also occurs when the trial court relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law. *State v. Lord,* 161 Wn.2d 276, 283–84, 165 P.3d 1251 (2007).

Evidentiary error is grounds for reversal only if it results in prejudice. *State v. Neal,* 144 Wn.2d 600, 611, 30 P.3d 1255 (2001). "An error is prejudicial if, 'within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.' " *Neal,* 144 Wn.2d at 611 (quoting *State v. Smith,* 106 Wn.2d 772, 780, 725 P.2d 951 (1986)). A trial court's erroneous admission of hearsay statements is harmless " 'where similar testimony was admitted earlier without objection.' " *State v. Weber,* 159 Wn.2d 252, 276, 149 P.3d 646 (2006), *cert. denied,* 551 U.S. 1137 (2007) (quoting *Ashley v. Hall,* 138 Wn.2d 151, 159, 978 P.2d 1055 (1999)); *see also State v. Dixon,* 37 Wn.App. 867, 874–75, 684 P.2d 725 (1984) (admission of written statement as excited utterance was error but was harmless because "the trial judge heard essentially the same details testified to by [the victim] as were included in the [erroneously admitted] written statement.").

B. Child Hearsay Exception

Under RCW 94.44.120's child hearsay exception, the trial court admitted ADM's hearsay statements (1) to Miller and Ashley during the November 21, 2007 interview in Leach's office; (2) to Davis during the medical examination that same day; and (3) to Miller during the December 20, 2007 interview. Assuming, without deciding, that these hearsay statements do not satisfy the *Ryan* factors, we hold that the trial court's admission of these hearsay statements was harmless.[FN15] Most indicative of the lack of prejudice flowing from ADM's hearsay statements is that ADM took the witness stand at trial, testified extensively about **Cearley's** sexual abuse, and was subject to cross-examination by **Cearley**. Moreover, **Cearley** not only failed to object to ADM's direct testimony about the sexual assaults, but he also questioned ADM on cross-examination about the hearsay statements she had made to Miller during the November 21 and December 20 interviews. ADM's trial testimony was essentially the same as the hearsay statements to which **Cearley** now objects.

> FN15. Accordingly, we need not address whether the trial court erred by failing to articulate a thorough application of the *Ryan* factors.

***5** Further rendering any evidentiary errors harmless is the other evidence of **Cearley's** sexual abuse of ADM. In the interior crotch area of her jeans, for example, law enforcement discovered semen that matched **Cearley's** DNA. Davis testified that her medical examination of ADM observations were "consistent" with the information that ADM had given during the initial interview. VRP (June 18, 2009) at 201–02. These facts also show that the trial court's admission of ADM's hearsay statements did not unfairly prejudice **Cearley**.[FN16] *See*

Weber, 159 Wn.2d at 276.

> FN16. Because the trial court's admission of ADM's hearsay statements to Davis under the child hearsay exception did not unfairly prejudice **Cearley**, we need not reach **Cearley's** argument that the trial court further erred by admitting ADM's hearsay statements to Davis under the medical hearsay exception of ER 803(a)(4) . *See* Br. of Appellant at 27–30.

C. Cumulative Child Hearsay

For similar reasons, **Cearley's** ER 403 "prejudicial bolstering effect" argument also fails. *See* Br. of Appellant at 31–35. First, as Division Three of our court held in *State v. Dunn*, 125 Wn.App. 582, 588–89, 105 P.3d 1022 (2005), child hearsay testimony that has "considerable overlap" with other child hearsay testimony is not necessarily prejudicial. Second, as we have explained in the preceding section of this opinion, substantial independent evidence of **Cearley's** sexual abuse of ADM nullifies any arguable prejudice flowing from the cumulative effect of ADM's child hearsay. We hold, therefore, that the trial court's admission of ADM's child hearsay statements, if error, was harmless.

II. Jury Instructions

Cearley next argues that Jury Instruction 19, which accompanied the special verdicts, was erroneous because it told the jury that, in order to answer " 'no' " to the special verdict questions about an ongoing pattern of abuse and an abuse of trust, the jury must " 'unanimously have a reasonable doubt as to the[se] question[s].' " Br. of Appellant at 36 (quoting Jury Instruction 19). Conceding that this instruction was erroneous, the State nevertheless contends that **Cearley** invited the alleged error because he was the one who proposed the erroneous instructions and, therefore, he cannot raise it on appeal. The State is correct.

"Under the invited error doctrine, a defendant may not request that instructions be given to the jury and then complain upon appeal that the instructions are constitutionally infirm." *State v. Aho*, 137 Wn.2d 736, 744–745, 975 P.3d 512 (1999). The record is clear that **Cearley** requested Jury Instruction 19, which he now attempts to claim on appeal constitutes reversible error. Holding that the invited error doctrine precludes his challenge to this instruction, we do not consider the merits of his challenge, despite the State's candid concession of error.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur: WORSWICK, A.C.J., and ARMSTRONG, J.

Wash.App. Div. 2,2011.
State v. Cearley
Not Reported in P.3d, 2011 WL 5184189 (Wash.App. Div. 2)

END OF DOCUMENT

APPENDIX "B"

FILED

2009 SEP 24 PM 4:42

VIRGINIA LEACH KLEIN
PACIFIC CO. WA

BY _____

Superior Court of Washington
County of PACIFIC

09 9 00412 6

State of Washington, Plaintiff,

vs.

STEVEN C. CEARLEY X,
Defendant.

SID: WA24277579
DOB: 01/07/1963

No. 07-1-00269-1

Felony Judgment and Sentence -- Prison
[ ] RCW 9.94A.507 Prison Confinement
(Sex Offense and Kidnapping of a Minor)
(FJS)
[ ] Clerk's Action Required, para 2.1, 4.1, 4.3a, 4.3b, 5.2, 5.3, 5.5 and 5.7
[ ] Defendant Used Motor Vehicle

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses**: The defendant is guilty of the following offenses, based upon [ ] guilty plea (date) _____ [X] jury-verdict (date) 6/30/09 [ ] bench trial (date) _____:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	A	9/1/07 – 9/15/07
III	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	A	9/30/07 – 10/13/07
IV	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	A	10/14/07 – 10/27/07
V	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	A	10/28/07 – 11/10/07
VI	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	A	11/20/07
VII	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	A	3/1/06 – 4/6/06

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)
(If the crime is a drug offense, include the type of drug in the second column.)
[ ] Additional current offenses are attached in Appendix 2.1a.
X The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.507.
The jury returned a special verdict or the court made a special finding with regard to the following:

[ ] The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.

[ ] The offense was predatory as to Count _____. RCW 9.94A.836.

[ ] The victim was under 15 years of age at the time of the offense in Counts _____ RCW 9.94A.837.

[ ] The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

[ ] The defendant acted with **sexual motivation** in committing the offense in Count_____. RCW 9.94A.835.

[ ] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.

[ ] The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ _____. RCW 9.94A.602, 9.94A.533.

[ ] Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

[ ] Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.

[ ] Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.____.

[ ] The defendant committed [ ] **vehicular homicide** [ ] **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.

[ ] Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.

[ ] Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW46.20.285.

[ ] The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

[ ] The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.

[ ] Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).

[ ] **Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	Crime	Cause Number	Court (county & state)
1.			
2.			

[ ] Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Crime	Date of Sentence	Sentencing Court (county & state)	A or J Adult, Juv.	Type of Crime
1	NONE					
2						
3						
4						
5						

[ ] Additional criminal history is attached in Appendix 2.2.
[ ] The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

[ ] The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

[ ] The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	9+	XII	240-318 MONTHS			LIFE/$50,000
III	9+	XII	240-318 MONTHS			LIFE/$50,000
IV	9+	XII	240 – 318 MONTHS			LIFE/$50,000
V	9+	XII	240-318 MONTHS			LIFE/$50,000
VI	9+	XII	240-318 MONTHS			LIFE/$50,000
VII	9+	X	149-198 MONTHS			LIFE/$50,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: _____.

2.4 [X] Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

[ ] below the standard range for Count(s) _____

[X] above the standard range for Count(s) I, III, IV, V VI

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[X] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [X] found by jury, by special interrogatory, and by the Judge at sentencing hearing.

[ ] within the standard range for Count(s) _____, but served consecutively to Count(s) _____.

Findings of fact and conclusions of law are attached in Appendix 2.4. [X] Jury's special interrogatory is attached. The Prosecuting Attorney [X] did [ ] did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

[ ] That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

_____.

[ ] The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

[X] Reserved

III. Judgment

3.1 The defendant is ***guilty*** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The court ***dismisses*** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) ***Confinement.*** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

_____months on Count _____ _____months on Coun _____

_____months on Count _____ _____months on Count _____

_____months on Count _____ _____months on Count _____

[ ] The confinement time on Count(s)_____ contain(s) a mandatory minimum term of _____.

[ ] The confinement time on Count _____ includes _____ months as enhancement for [ ] firearm [ ] deadly weapon [ ] sexual motivation [ ] VUCSA in a protected zone [ ] manufacture of methamphetamine with juvenile present [ ] sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: _____.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____.

The sentence herein shall run consecutively with the sentence in cause number(s) _____

_____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

_____.

(b) ***Confinement.*** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC: All counts to run concurrently.

Counts I, III, IV, V, VI minimum term: 800 months maximum term: Life

Count VII minimum term: 198 months maximum term: Life

(c) ***Credit for Time Served.*** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(d) **[ ] *Work Ethic Program.*** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) _____ 36 months Sex Offenses

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(Sex offenses, only) For count(s) I, III, IV, V, VI, VII, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm

compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

[ ] consume no alcohol.

[ ] have no contact with: _____.

[ ] remain [ ] within [ ] outside of a specified geographical boundary, to wit:

_____.

[ ] not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

[ ] participate in the following crime-related treatment or counseling services:

_____.

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management, and fully comply with all recommended treatment. _____

[ ] comply with the following crime-related prohibitions:_____

_____

_____.

[X] Other conditions:

SEE ATTACHED APPENDIX F

_____

_____.

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE			
PCV	$ 500	Victim assessment	RCW 7.68.035
PDV	$	Domestic Violence assessment	RCW 10.99.080
CRC	$ 200		Court

costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee	$	FRC
Witness costs	$	WFR
Sheriff service fees	$	SFR/SFS/SFW/WRF
Jury demand fee	$	JFR
Extradition costs	$	EXT
Other	$	

PUB	$ ~~250.00~~	Fees for court appointed attorney	RCW 9.94A.760
WFR	$	Court appointed defense expert and other defense costs	RCW 9.94A.760

FCM/MTH $_____ Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCD NTF/SAD/SDI $_____ Drug enforcement fund of _____ RCW 9.94A.760

CLF $_____ Crime lab fee [ ] suspended due to indigency RCW 43.43.690

$ 100 DNA collection fee RCW 43.43.7541

FPV $_____ Specialized forest products RCW 76.48.140

$_____ Other fines or costs for: _____

RTN/RJN $_____ Emergency response costs (Vehicular Assault, Vehicular Homicide. Felony DUI, only, $1000 maximum) RCW 38.52.430
Agency: _____

$_____ Restitution to: _____

RTN/RJN

$_____ Restitution to: _____

$_____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

$ ~~1050.00~~ 800 cc *Total* RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[ ] is scheduled for _____ (date).

[X] The defendant waives any right to be present at any restitution hearing (sign initials): _____.

[ ] ***Restitution*** Schedule attached.

[ ] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant	***Cause Number***	(Victim's name)	(Amount-$)

RJN _____

_____

_____

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[ ] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____ per month commencing _____. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

[ ] The court orders the defendant to pay costs of incarceration at the rate of $_____ per day, (actual costs not to exceed $100 per day). (*JLR*) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b[ ] Electronic Monitoring Reimbursement. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] *HIV Testing.* The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

[X] The defendant shall not have contact with A.D.M. DOB: 1/4/98 _____ (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until FOR LIFE (which does not exceed the maximum statutory sentence).

[ ] The defendant is excluded or prohibited from coming within _____ (distance) of: [ ] _____ (name of protected person(s))'s [ ] home/ residence [ ] work place [ ] school [ ] (other location(s)) _____, or [ ] other location: _____, until _____ (which does not exceed the maximum statutory sentence).

[ ] A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 Other: _____

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the

date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5 Firearms. **You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license.** (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.

5.6 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after

beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding, weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.7 **Motor Vehicle**: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.9 **Other**: _____

Done in Open Court and in the presence of the defendant this date: 9/24/09

Judge/MICHAEL SULLIVAN

Senior Deputy Prosecuting Attorney DAVID BUSTAMANTE, WSBA#30668	Attorney for Defendant TIMOTHY HEALEY, WSBA#	Defendant STEVEN C. CEARLEY

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

VI. Identification of the Defendant

SID No. ____ WA24277579_____ (If no SID complete a separate Applicant card (form FD-258) for State Patrol)

Date of Birth ____ 01/07/1963_____

FBI No. ___ 426358VC5_____

Local ID No. _____

PCN No. _____

Other _____

Alias name, DOB: _____

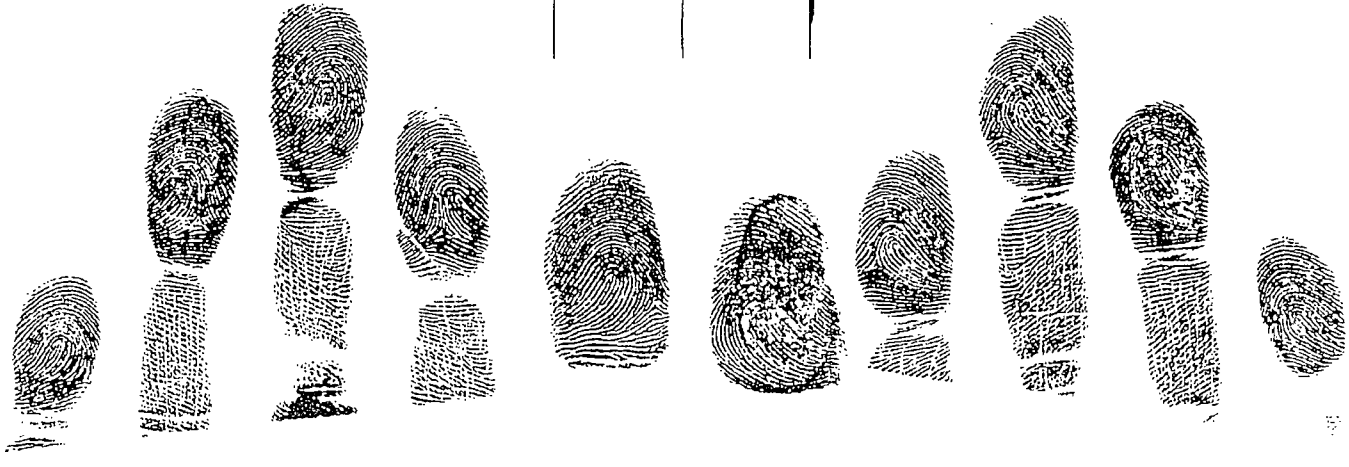
Race:			Ethnicity:	Sex:
[ ] Asian/Pacific Islander	[ ] Black/African-American	[X] Caucasian	[ ] Hispanic	[X] Male
[ ] Native American	[ ] Other:_____		[X] Non-Hispanic	[ ] Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, ~~Deputy Clerk~~, _____ Dated: 9-24-2009

The defendant's signature: _____

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously



1JB4

Superior Court of Washington
County of PACIFIC

State of Washington, Plaintiff, vs. STEVEN C. CEARLEY Defendant.	**No. 07-1-00269-1** **Findings of Fact and Conclusions of Law for an Exceptional Sentence** **(Appendix 2.4 Judgment and Sentence)** **(Optional)** **(FNFCL)**

The court imposes upon the defendant an exceptional sentence [X] above [ ] within [ ] below the standard range based upon the following Findings of Fact and Conclusions of Law:

Findings of Fact

I. The exceptional sentence is justified by the following aggravating circumstances:

(a) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished, pursuant to RCW 9.94A.535(2)(c).

(b) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense, pursuant to RCW 9.94A.535(3)(n).

[X] The grounds listed in the preceding paragraph, taken together or considered individually, constitute sufficient cause to impose the exceptional sentence. This court would impose the same sentence if only one of the grounds listed in the preceding paragraph is valid.

Conclusions of Law

I. There are substantial and compelling reasons to impose an exceptional sentence above the standard range pursuant to RCW 9.94A.535.

II. The Court has jurisdiction of the parties and subject matter of this action.

III. A sentence above the standard range is in the interest of justice and is consistent with the purposes of the Sentencing Reform Act.

IV. A sentence of **800 months** is appropriate to ensure that punishment is proportionate to the seriousness of the offense.

Dated: 9/24/09

Judge/MICHAEL SULLIVAN

DAVID BUSTAMANTE,
WSBA No. #30668
Senior Deputy Prosecutor

TIMOTHY HEALEY,
WSBA# [illegible]
Attorney for Defendant

Defendant

FILED

2009 JUN 30 PM 4:26

VIRGINIA LEACH
PACIFIC CO. WA

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 07-1-00269-1
	)	
vs.	)	SPECIAL VERDICT FORM M
	)	
STEVEN C. CEARLEY,	)	
	)	
Defendant.	)	
	)	

We, the jury, having found the defendant, Steven C. Cearley, guilty of rape of a child in the first degree as charged in Count VI, return a special verdict by answering as follows:

QUESTION 1: Was the crime part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime?

ANSWER: Yes (Write "yes" or "no")

DATE: 6/30/09

Presiding Juror

STATE OF WASHINGTON } ss.
COUNTY OF PACIFIC }

I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, DO HEREBY CERTIFY that the foregoing document, consisting of 1 page(s), is a true and correct copy of the original now on file and of record in my office and as County Clerk, I am the legal custodian thereof.

Signed and sealed at South Bend, Washington this date.

6-30-2009

Virginia A. Leach, County Clerk

By _____ Deputy

FILED

2009 JUN 30 PM 4:26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 07-1-00269-1
	)	
vs.	)	SPECIAL VERDICT FORM L
	)	
STEVEN C. CEARLEY,	)	
	)	
Defendant.	)	
	)	

We, the jury, having found the defendant, Steven C. Cearley, guilty of rape of a child in the first degree as charged in Count V, return a special verdict by answering as follows:

QUESTION 1: Was the crime part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime?

ANSWER: Yes (Write "yes" or "no")

DATE: 6/30/09

Presiding Juror

STATE OF WASHINGTON) ss.
COUNTY OF PACIFIC)
I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, DO HEREBY CERTIFY that this document, consisting of ... page(s), is a true and correct copy of the original now on file and of record in my office and in the County Clerk, in the legal custody thereof.
Signed and sealed at South Bend, Washington this date.
6-22-2009
Virginia A. Leach, County Clerk
By ... Deputy

FILED

2009 JUN 30 PM 4:26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON, Plaintiff,	NO. 07-1-00269-1
vs.	SPECIAL VERDICT FORM K
STEVEN C. CEARLEY, Defendant.	

We, the jury, having found the defendant, Steven C. Cearley, guilty of rape of a child in the first degree as charged in Count IV, return a special verdict by answering as follows:

QUESTION 1: Was the crime part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime?

ANSWER: Yes (Write "yes" or "no")

DATE: 6/30/09

Presiding Juror

STATE OF WASHINGTON)
COUNTY OF PACIFIC) ss.

I Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, DO HEREBY CERTIFY that this document consisting of 1 page(s) is a true and correct copy of the original now on file and of record in my office and I as County Clerk, I am the legal custodian thereof.

Signed and sealed at South Bend, Washington this date: 6-30-2009

Virginia A. Leach, County Clerk

By _____ Deputy

FILED

2009 JUN 30 PM 4:26

VIRGINIA LEACH, CO. CLK.

BY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 07-1-00269-1
	)	
vs.	)	SPECIAL VERDICT FORM J
	)	
STEVEN C. CEARLEY,	)	
	)	
Defendant.	)	
	)	

We, the jury, having found the defendant, Steven C. Cearley, guilty of rape of a child in the first degree as charged in Count III, return a special verdict by answering as follows:

QUESTION 1: Was the crime part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime?

ANSWER: Yes (Write "yes" or "no")

DATE: 6/30/09

Presiding Juror

STATE OF WASHINGTON } ss.
COUNTY OF PACIFIC }

I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County Washington, DO HEREBY CERTIFY that this document, consisting of ____ page(s), is a true and correct copy of the original now on file and of record in my office, and as County Clerk, I am the legal custodian thereof.

Signed and sealed at South Bend, Washington, this date: 6-30-2009

Virginia A. Leach, County Clerk

By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

FILED
2009 JUN 30 PM 4:26
VIRGINIA LEACH, CLERK
PACIFIC CO., WA

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 07-1-00269-1
	)	
vs.	)	SPECIAL VERDICT FORM I
	)	
STEVEN C. CEARLEY,	)	
	)	
Defendant.	)	
	)	

We, the jury, having found the defendant, Steven C. Cearley, guilty of rape of a child in the first degree as charged in Count II, return a special verdict by answering as follows:

QUESTION 1: Was the crime part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time?

ANSWER: _____ (Write "yes" or "no")

QUESTION 2: Did the defendant use his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime?

ANSWER: _____ (Write "yes" or "no")

DATE: _____

_____
Presiding Juror

STATE OF WASHINGTON } ss
COUNTY OF PACIFIC }

I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, DO HEREBY CERTIFY that the document consisting of 1 page(s) is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at South Bend, Washington, this date.

6-24-2009

Virginia A. Leach, County Clerk

By _____

FILED

2009 JUN 30 PM 4:26

VIRGINIA A. LEACH
PACIFIC CO. WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 07-1-00269-1
	)	
vs.	)	SPECIAL VERDICT FORM H
	)	
STEVEN C. CEARLEY,	)	
	)	
Defendant.	)	
	)	

We, the jury, having found the defendant, Steven C. Cearley, guilty of rape of a child in the first degree as charged in Count I, return a special verdict by answering as follows:

QUESTION 1: Was the crime part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime?

ANSWER: Yes (Write "yes" or "no")

DATE: 6/30/09

Presiding Juror

STATE OF WASHINGTON)
COUNTY OF PACIFIC) ss.

I, Virginia A. Leach, County Clerk and Clerk of the Superior Court of Pacific County, Washington, do hereby CERTIFY that the foregoing document consisting of 1 page(s) is a true and correct copy of the original now on file in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at South Bend, Washington, this date.

6-24-2009

Virginia A. Leach, County Clerk

By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON Plaintiff v. CEARLEY, Steven C. Defendant DOC No. 332286	Cause No.: 07-1-00269-1 **JUDGEMENT AND SENTENCE (FELONY)** **APPENDIX F** **ADDITIONAL CONDITIONS OF SENTENCE**

CRIME RELATED PROHIBITIONS:

1. Comply with all conditions of community custody/placement as imposed by the Department of Corrections and the Community Corrections Officer.
2. While on community custody the defendant shall report and be available for contact with the assigned Community Corrections Officer as directed
3. Work at a Department of Corrections approved education/employment and or community service site.
4. Pay supervision fees as determined by Department of Corrections.
5. Follow affirmative acts as necessary to monitor compliance with the orders of the Court as required by the Department of Corrections.
6. Have prior Department of Corrections approval for all resident locations and living arrangements.
7. No contact with the victim while on community custody.
8. Not to possess, own or control firearms or ammunition.
9. Not to consume or possess controlled substances or drug paraphernalia without a valid prescription.
10. Submit to random urinalysis testing as directed by the Community Corrections Officer.
11. Follow all sex offender registration requirements.

12. Have no contact with juveniles under the age of 18 years old unless under the supervision of an adult who is aware of this conviction and the conditions of supervision and approved by the therapist and Community Corrections Officer.
13. Have no contact or communication either oral or written or through a third party with the victim's family or legal guardian while on community custody.
14. Submit to polygraph examinations to monitor compliance with the conditions and or treatment at the direction of the Community Corrections Officer and/or therapist.
15. Comply with any other recommendations made by the Department of Corrections in the Pre-Sentence Report and Investigation.

9/24/09 _____
DATE JUDGE, PACIFIC COUNTY SUPERIOR COURT

RPT/RPT/09-130.rtf
9/9/09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON, Plaintiff, vs. STEVEN C. CEARLEY, Defendant.	NO. 07-1-00269-1 WARRANT OF COMMITMENT

STATE OF WASHINGTON

TO: The Sheriff of Pacific County.

The defendant: **STEVEN C. CEARLEY** was convicted in the Superior Court of the State of Washington of the crime of **RAPE OF A CHILD IN THE FIRST DEGREE FOUR COUNTS AND 1 COUNT OF CHILD MOLESTATION IN THE FIRST DEGREE and** the Court has ordered that the defendant be punished by serving the determined sentence of:

ALL COUNTS TO RUN CONCURRENTLY

[X] 800 (month(s)) on **Count NO.** I, III, IV, V, VI; _____ **months** on Count No. III; _____ months on Count No. IV; _____ months on Count No. V; _____ months on Count VI; 198 months on Count VII; _____ months on Count VII; _____ months on Count VIII; _____ months on Count IX

[ ]____ (day(s) (month(s)) of partial confinement in the County jail.

[X] ____(month(s)) of total confinement in the Pacific County jail.

Defendant shall receive credit for time served to this date.

[X] YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification,

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

confinement and placement as ordered in the Judgment and Sentence in the Pacific County Jail.

[] YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

[ ] The defendant is committed for up to thirty (30) days evaluation at Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

YOU THE SHERIFF ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery of the proper officers of the Secretary of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED, to receive the defendant for evaluation as ordered in the Judgment and Sentence.

DATED this 24TH day of September, 2009.

By Direction of the Honorable

MICHAEL SULLIVAN

JUDGE

CLERK

BY: _____
DEPUTY CLERK

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail ✓
Institutions (3) (2)
SA ✓

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

APPENDIX "C"

DECLARATION OF KRISTINE CAMENZIND

I, Kristine Camenzind, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

1. I am the Executive Director of the Crisis Support Network. I have held this position since January 2006. Prior to that time I was the domestic violence/sexual assault advocate for the Crisis Support Network. I began working for Crisis Support Network in September 1999.

2. Crisis Support Network is a social service agency in Pacific County that provides comprehensive and caring services to crime victims. In particular, Crisis Support Network focuses on domestic violence and sexual assault. Crisis Support Network is an independent agency and has never been associated with the Pacific County Prosecutor's Office.

3. As part of my duties, I was the primary advocate under Chapter 7.69 RCW and Chapter 7.69A RCW for victim A.D.M. in *State v. Cearley*, Pacific County Superior Court Cause No. 07-1-00269-1. As such, I was present in court during Mr. Cearley's trial. The trial took place during June 2009 over a number of days.

4. Per the instructions of the trial judge, I sat in the front row of the gallery. When A.D.M. testified, I did not make any gestures in an attempt to cause A.D.M. to alter her testimony.

5. I have reviewed the declaration of Steven Cearley dated November 23, 2012, which is contained in Appendix C of Mr. Cearley's Personal Restraint Petition. The allegations

contained in paragraph no. 11 that pertain to my behavior are not correct. Moreover, given where I was sitting in the courtroom, Mr. Cearley would have had a difficult time observing me because I was seated behind the counsel table and slightly to the side of Mr. Cearley.

6. At no time during the trial did I nor any member of my staff engage in a discussion with any member of the jury. On numerous occasions during the trial, the trial judge admonished the parties and the witnesses to refrain from any contact with the jury. Both myself and my staff heeded this directive because we knew that any contact with jurors, even if seemingly innocuous, could be grounds for a mistrial. I directed my staff to be especially careful in trying to avoid any type of contact with the jury. No contact occurred between a victim advocate and jury members in the "breezeway" outside of court.

7. I strictly complied with the directives of the trial judge. I was not allowed to accompany A.D.M. to the witness chair. A.D.M. also was not allowed to have any "comforting" items with her, e.g. a doll, when she testified. I did allow A.D.M. to have a squeezable toy when she was outside the courtroom. I took this action based on my role as a victim advocate in order to make A.D.M. more comfortable with court procedures.

8. In paragraph nos. 14-16 of Mr. Cearley's declaration dated November 23, 2012, Mr. Cearley asserts that two jurors would sleep during the afternoon of each trial day. I was in a position to notice any unusual actions of jury members. Contrary to Mr. Cearley's assertion, I did not observe any of the jurors sleeping. If any of the jurors had been sleeping, I would have noticed their inattention.

9. During the course of Mr. Cearley's trial, I did not observe any hostile interaction between Mr. Cearley and Mr. Timothy Healy, who was Mr. Cearley's trial counsel. I was in a position to notice any untoward interactions between Mr. Cearley and his trial counsel during court sessions because I was seated

behind them with an unobstructed view of them. Mr. Healey vigourously represented the interests of Mr. Cearley, and at no time did it appear that Mr. Healey was trying to undermine his client by exuding an uncouth demeanor.

Dated this 11th day of April, 2013 at South Bend, Washington.

KRISTINE CAMENZIND

APPENDIX "D"

CONFIDENTIAL JUROR QUESTIONNAIRE

I. INTRODUCTION

DO NOT DISCUSS THESE QUESTIONS OR YOUR ANSWERS WITH ANYONE

This questionnaire is intended to provide the court and the attorneys with information about your qualifications to sit as a juror on this case. Please answer the following questions openly, fully, and truthfully. IF YOU ANSWER YES TO ANY QUESTION, PLEASE PROVIDE AN EXPLANATION USING THE SPACE PROVIDED OR ADDITIONAL SPACE, IF NECESSARY, AT THE END OF THE QUESTIONS OR ON THE BACK OF ANY OF THE PAGES.

The information you provide is confidential for use by the Court and the lawyers during voir dire. This questionnaire will be part of the sealed Court file and will not be available for inspection publicly or privately. The questionnaires will remain sealed unless the Court signs an order directing that they be unsealed.

The court will permit questioning about your answers to these questions.

II. QUESTIONS

1. Do you have a High School diploma? _____ GED? _____

2. Have you attended college or vocational school? _____
   If so, please state:

   Name of college or vocational school: _____

   Years attended: _____

   Degrees awarded: _____

3. If you have children, please provide the age(s), sex,

education, and occupation in the space below:

Age	Sex	Education	Occupation
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Do you know anybody who is involved in the criminal justice system as a prosecutor, defense lawyer, court personnel, or law enforcement person? Please describe briefly. _____

_____

_____

_____

5. Have you or any family member or close friend ever been:

(a) charged with a crime? _____

(b) the victim of a crime? _____

(c) convicted of a crime? _____

If your answer to any of the above was yes, please briefly describe who it was and the circumstances. _____

_____

_____

_____

_____

6. If your answer to any part of question 7 was yes, how do you feel you or the person you knew was treated by the criminal

justice system? _____

_____

_____

_____

_____

7. Have you, any member of your family, or any close friend ever been falsely accused of a crime? If so, please explain.

_____

_____

_____

8. Have you or any member of your family had any training or experience regarding allegations of domestic violence or sexual misconduct? If so, what? _____

_____

_____

_____

9. Have you, any member of your family, or anyone you know been accused of domestic violence? Please describe briefly. _____

_____

_____

_____

10. Have you, any member of your family, or anyone you know been accused of sexual misconduct? Please describe briefly. _____

_____

11. Have you, any member of your family, or anyone you know been the victim of domestic violence? Please describe briefly.

12. Have you, any member of your family, or anyone you know been a victim of sexual misconduct? Please describe briefly.

13. What is your personal opinion of the criminal justice system and why?

RETURN THIS QUESTIONNAIRE TO THE CLERK

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE PERSONAL RESTRAINT PETITION OF: STEVEN CRAIG CEARLEY Petitioner,	)	NO 44282-5
	)	AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF PACIFIC)

BRANDI HUBER, being first duly sworn on oath, deposes and says:

I am the Office Administrator for the Prosecuting Attorney's Office for Pacific County, Washington.

On April 12, 2013, I mailed two copies of the State's Response to the Personal Restraint Petition, along with the Affidavit of Service and Affidavit of Mailing, via the U.S. mail, postage prepaid to Jeffrey E. Ellis and B. Renee Alsept, Attorneys for Petitioner, at the following address:

JEFFREY E. ELLIS
B. RENEE ALSEPT
LAW OFFICE OF ALSEPT & ELLIS, LLC
621 SW MORRISON STL, STE 1025
PORTLAND OR 97205

Brandi Huber
BRANDI HUBER

SUBSCRIBED and SWORN to before me this 12th day of April, 2013.

Notary Public
NOTARY PUBLIC in and for the State of Washington, residing at Raymond.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE PERSONAL RESTRAINT PETITION OF: STEVEN CRAIG CEARLEY Petitioner,	)	NO 44282-5
	)	AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF PACIFIC)

DAVID BURKE, being first duly sworn on oath, deposes and says:

I am the Pacific County Prosecutor for the Prosecuting Attorney's Office for Pacific County, Washington.

On April 12, 2013, I personally filed the State's Response to the Personal Restraint Petition, along with the Affidavit of Service and Affidavit of Mailing with the Court of Appeals, Division II.

David Burke
DAVID BURKE

SUBSCRIBED & SWORN to before me this 12th day of April, 2013.

Tonah M Sousa
NOTARY PUBLIC in and for the State of Washington, residing at Raymond.